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IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 2, Original.

COMMONWEALTH OF VIRGINIA,

Complainant,

vs.

STATE OF WEST VIRGINIA,

Defendant.

RESPONSE OF THE DEFENDANT TO THE MOTION OF THE COMPLAINANT SUBMITTED IN THE ABOVE ENTITLED CAUSE.

STATE OF WEST VIRGINIA,
By A. A. REED,
Attorney-General.

In the Supreme Court of the United States

OCTOBER TERM, 1913.

No 2. Original.

COMMONWEALTH OF VIRGINIA

VS.

STATE OF WEST VIRGINIA.

IN EQUITY.

RESPONSE OF THE DEFENDANT TO THE MOTION OF THE COMPLAINANT SUBMITTED IN THE ABOVE ENTITLED CAUSE.

And now, on this, the 13th day of October, 1913, comes the respondent, the State of West Virginia, by A. A. Lilly, Esq., the Attorney General of said State, and, for answer to the motion submitted in the above cause to

> "Proceed with a further hearing and determination of said case, and to settle and determine all questions left open and undetermined by its decision rendered on the sixth day of March, 1911,"

says that—

1. This Honorable Court, in its opinion in this cause

rendered on the 6th day of March, 1911, after having established the basis for determining the equitable proportion of the public debt of the original State of Virginia which was assumed by the State of West Virginia at the time of its creation as a State, suggested a conference between the two litigating States, to the end that a final decree might be entered by agreement without further contention.

2. The State of West Virginia, in a sincere effort to follow this suggestion, at the first possible moment after it had been made, under its Constitution and laws, undertook, through its Legislature, to establish a Commission competent to deal with the question without further contention, and in the spirit and temper that this Court indicated should characterize the situation.

Under the West Virginia Constitution, the sessions of the Legislature of that State are held biennially, and not annually. The provision of the State Constitution governing this question reads as follows:

> "The legislature shall assemble at the seat of government biennially, and not oftener, unless convened by the Governor."
> W. Va. Constitution of 1872, Art. VI., Sec. 18.

And the regular biennial session thereof in the year 1911 had come to an end prior to the delivery of the opinion of this Court in this cause on the 6th day of March, 1911, wherein the suggestion of a conference between the two States was made; so that a Commission looking to the execution of this Court's suggestion could not have been established by a joint resolution of the two Legislative Houses of the State during that session, and this was the only means, in the judgment of the officials of the State, by which the Court's suggestion could be effectuated.

It is true that the Honorable William E. Glasscock, then Governor of the State of West Virginia, did, by proclamation of the 18th day of April, 1911, convene the Legislature of said State in extraordinary session on the 16th day of May, 1911; but such proclamation did not embrace the con-

sideration, or authorize the appointment, of a Virginia Debt Commission, and, in consequence, under the Constitution of the State, the Legislature, when so convened, could not enter upon the business of appointing such Commission. The constitutional provision referred to reads as follows:

> "The Governor may, on extraordinary occasions, convene at his own instance the legislature; but, when so convened, it shall enter upon no business except that stated in the proclamation by which it was called together."
> W. Va. Constitution of 1872, Art. VII., Sec. 7.

The facts and circumstances surrounding this extraordinary session of the Legislature of West Virginia, and the reasons why the proclamation of the Governor convening it did not call for the appointment of a Virginia Debt Commission, were fully set forth and given in the response of the State of West Virginia to the like motion of the State of Virginia made and submitted in this cause on the 10th day of October, 1911, and were considered by this Honorable Court a sufficient justification for the State of West Virginia to postpone the appointment of a Virginia Debt Commission until the next regular session of the Legislature of that State, to be held in January, 1913.

3. At the time appointed by the Constitution of the State of West Virginia, its Legislature next met in regular session on the 8th day of January, 1913, and, during that session, that is to say, on the 21st day of February, 1913, a joint resolution was passed creating a Virginia Debt Commission, to be composed of eleven members, to be appointed by the Governor, and with authority and direction, among other things, "to negotiate with the Commonwealth of Virginia for a settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper to be borne by the State of West Virginia." This joint resolution is correctly set forth in the second paragraph of the motion of the complainant filed herein, and

a copy thereof was transmitted by the Governor of West Virginia to the Governor of Virginia on the 12th day of March, 1913, with the accompanying promise that the Commission therein provided for would be appointed without unnecessary delay.

4. Within eleven days after the passage of the foregoing resolution, that is to say, upon the 4th day of March, 1913, the newly elected Governor of the State of West Virginia, the Honorable H. D. Hatfield, was inaugurated; and, notwithstanding the fact that he found martial law declared, and in existence, in a large mining district in the State, requiring the services of nearly the entire National Guard of the State, and calling for the devotion of almost his entire time, to the end that blood and bankruptcy might be avoided, which trouble was speedily contributed to during the latter part of the month of March by disastrous floods in the Ohio Valley, necessitating State aid and State protection, he was not unmindful of the necessity for the settlement of the Virginia debt question, and, after due reflection, in an effort to find suitable men for the consummation of this Honorable Court's suggestion, on the 19th day of April, 1913, appointed the eleven Commissioners required by the legislative resolution. Several of the Commissioners so appointed, after some hesitation and delay, declined, and it became necessary to seek other competent and suitable men. This was done without unnecessary delay, and the Commission was finally completed by the filling of vacancies on the 10th day of June, 1913, and, upon the same day, it was organized by the election of the Honorable John W. Mason as Chairman, and of the Honorable John T. Harris as Secretary.

Without the loss of any time, that is to say, upon the same day (June 10, 1913), the Governor of the State of West Virginia communicated by letter with the Governor of the State of Virginia, notifying him of the passage by the West Virginia Legislature of the foregoing resolution establishing the Virginia Debt Commission; that said Com-

mission had been organized, and would meet again on the 22d day of July, 1913, and would be pleased to meet the Virginia Commission at any time after that date, also requesting the Virginia Commission to state where it would be agreeable to hold a joint meeting of the two Commissions. Said letter enclosed not only a copy of the joint resolution, but also a list of the names of the members of said Commission. Said letter is truly set forth as "Exhibit A" to the motion of the complainant herein.

5. Pursuant to the adjournment of June 10, 1913, the West Virginia Commission again met at the City of Charleston, in the State of West Virginia, on the 22d day of July, 1913, and, on the 23d day of that month, adjourned to meet in the City of Washington, D. C., on the 24th day of July, 1913. Pursuant to this last adjournment, it met at Washington on the 24th day of July, and adjourned until the next day, at which time it met in joint session with the Virginia Commission.

6. At the joint conference of the two Commissions held at Washington on the 25th day of July, 1913, as aforesaid, the Virginia Commission took the position that, under the decision of this Court, the sole matter left open and remaining for consideration and adjustment by the two Commissions was "the amount of interest which West Virginia should pay upon the sum ascertained by the Court to be West Virginia's share of the principal" of Virginia's debt. This position is evidenced by the first paragraph of a resolution adopted by the Virginia Commission, and presented through its Chairman to the West Virginia Commission. In response to this resolution, the West Virginia Commission, through its Chairman, among other things, made the following statement:

> "From our standpoint and our reading of the opinion of the Supreme Court, other things are to be considered besides the question of interest."

Following this response of the Chairman of the West Virginia Commission, Mr. Randolph Harrison, selected as

spokesman for the Virginia Commission, made a lengthy statement, wherein he elaborated the Virginia position that nothing but interest should be considered, giving his reasons therefor, and embracing therein the construction placed by the Virginia Commission upon the opinion of this Court delivered upon the 6th day of March, 1911, in this cause; but, proceeding, he further said:

> "We also recognize the fact that it is competent for the two Commissions to consider the question of settlement of the entire controversy, precisely as we might do if there were no other question pending before us, and, if it is the pleasure of the West Virginia Commission to take up that question, and communicate to the Virginia Commission at this conference a proposition looking to a compromise settlement of the whole controversy, we will be glad to receive it, and will give it respectful and fair consideration."

In further response to the Virginia position, the West Virginia Commission adopted and presented to the Virginia Commission a resolution, wherein, among other things, it was set forth that, in the view of the West Virginia Commission, the then conference had for its object "a preliminary discussion and exchange of views, and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working program"; and it was proposed that each Commission should appoint a sub-committee consisting, respectively, of three of its own members, "with instructions to confer at the earliest convenient time and place, and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that should be submitted back to the two respective Commissions for consideration by each, and for final determination at a joint conference to be subsequently arranged between the Chairmen of the two Committees."

To the foregoing resolution the Virginia Commission, by like resolution, replied by agreeing to the appointment of a

sub-committee of three formed from each Commission, provided the consideration of said Committees should be confined to the following matters and things:

> "(1) The amount of interest which West Virginia should pay upon the sum ascertained by the Court in its decision to be West Virginia's share of the principal of the debt.
> (2) Any proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia."

To this the West Virginia Commission, through its Chairman, replied that it was anxious to proceed with the negotiations, but could not consent to agree in advance that only the question of interest should be considered, or that the West Virginia sub-committee should be required to first submit a proposition looking to a settlement, adding that it was willing "and anxious to approach a settlement upon equal terms, leaving, in the first instance, all questions of procedure to the said sub-committees." It further answered that it did not feel sufficiently acquainted with the questions involved—for reasons theretofore stated—to submit a proposition at that time, and asked that the whole subject-matter be submitted to the sub-committees, "with the understanding that the sub-committees be required to report their action for approval to their respective commissions at a time in the near future to be now agreed upon."

The Virginia Commission replied that it felt "constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed."

As a consequence, the sub-committees were not appointed, and, after expressing regret, the West Virginia Commission suggested a future meeting of the joint Commissions, to which the Virginia Commission, after reiterating its former position, and stating that it could not recede

therefrom, agreed, and suggested an adjournment until August 12, 1913, at the New Willard Hotel, Washington, provided the future conference should not embrace a consideration *de novo* of the entire case, and the West Virginia Commission agreed to the time and place of adjournment, but insisted that the adjournment should be "without terms and conditions, and without prejudice to the rights of either party." Thereupon, the conference was adjourned to meet on Tuesday, August 12, 1913, at ten o'clock, A. M., at the New Willard Hotel, Washington, D. C.

The matters and things hereinbefore in this paragraph alleged are set forth in detail in the record of the "Proceedings of a Joint Conference between the Virginia Debt Commissions of the States of Virginia and West Virginia," printed herewith as a part hereof, and marked "Exhibit A."

7. After the West Virginia Commission returned home, the Chairman thereof, through correspondence with its various members, discovered that it would not be prepared, on account of shortness of time, for the adjourned joint conference of the two Commissions to be held on August 12th, and, thereupon, on the 9th of August, he telegraphed to the Chairman of the Virginia Commission as follows:

> "HON. JOHN B. MOON,
> *Charlottesville*, Va.
> Certain our Debt Commission will not be ready for meeting Tuesday. Members have not had time enough for investigation. We meet Charleston Monday, and will have to ask that time be extended to a day in near future. Under these circumstances, I suggest Washington meeting be now recalled.
>
> JOHN W. MASON."

8. The West Virginia Commission convened again at Charleston, West Virginia, on the 11th day of August, 1913, and the Chairman reported his telegram to Mr. Moon, and, having received no reply thereto, was directed by the Commission to at once communicate with Mr. Moon by tele-

phone. This he did, and Mr. Moon then informed him that he had notified the members of the Virginia Commission that the August 12th meeting had been recalled, and Mr. Mason suggested that a time be fixed for another meeting in the near future, to be arranged by the Chairmen of the two Commissions, to which Mr. Moon assented.

At this same meeting, the West Virginia Commission adopted the following resolution:

> "*Resolved*, That a sub-committee, consisting of Messrs. Ord, Young and Ice, is hereby appointed to co-operate with the Attorney General and the associate counsel in this case in drawing up the necessary data and statistics as a basis for propositions to be made to the Virginia Commission, and that either one, two or all of said sub-committee at their convenience, are authorized to perform the work assigned them in connection with this matter."

In pursuance of the foregoing resolution the said sub-committee entered upon its duties, and, after making careful investigation, met in the City of Charleston on the 18th day of September, 1913, and adopted the following resolution:

> "WHEREAS, The sub-committee of the West Virginia Commission of the Virginia Debt Commission appointed to formulate a proposition of settlement to be submitted to the Virginia Commission find it necessary to ascertain certain facts and figures not in the record, and not available from the record, which will take some time, therefore, be it
>
> *Resolved*, That the Honorable John W. Mason, Chairman of the West Virginia Commission, be requested to inform the Virginia Commission, by a letter directed to its Chairman, Mr. Moon, that we are diligently at work on a proposition to be submitted to the Virginia Commission, but that further time will be needed to complete it."

In obedience to the foregoing resolution, the Chairman

of the West Virginia Debt Commission, on the 22d day of September, 1913, addressed and mailed the following letter to the Hon. John B. Moon, Chairman of the Virginia Debt Commission:

"FAIRMONT, WEST VIRGINIA, September 22, 1913.

HONORABLE J. B. MOON,

Chairman Virginia Debt Commission,

Charlottesville, Virginia.

MY DEAR SIR:

I am instructed by a sub-committee of the West Virginia Commission, appointed by the Governor of that State to negotiate a settlement, in accordance with the suggestions of the Supreme Court of the United States, of the controversy between the States of Virginia and West Virginia, relative to the settlement of the Virginia debt, to say to you, and through you to the Virginia Commission, that the West Virginia Commission has in course of preparation a proposition (looking to a settlement) to be presented to your Commission at the earliest moment; but that it will yet require some three or four months time in which to put said proposition in final and intelligent form. I cordially endorse the recommendation of the sub-committee, and hope it will be agreeable to your Committee to consider the same favorably.

In the meantime, if your Commission should desire to submit any suggestions or propositions to this Commission looking to the same end, we would gladly, and without unnecessary delay, consider the same.

With great respect I remain yours, etc.,

JOHN W. MASON,

Chairman Virginia Debt Commission."

To the foregoing letter, Chairman Moon, under date of the 24th of September, 1913, made reply, and, among other things, said:

"I am sure you will pardon my adverting to the fact that more than two years and a half ago (March 6th, 1911), the Court referred the interest

question and any other matter of detailed computation to the two States for their possible agreement, and we sent a sub-committee to your State, who returned without being able to accomplish any results.

Our Commission, therefore, felt constrained to ask for some conclusion of the question of interest involved in the controversy, and requested our Attorney General to act accordingly, though I do not know that this would preclude an agreement, if one could be arrived at in the premises."

9. It appears, therefore, from the foregoing facts and from the motion filed herein by the complainant, which is dated the 22d day of September, 1913, that, upon the very day that the Chairman of the West Virginia Commission was mailing his letter aforesaid to the Chairman of the Virginia Commission, wherein he stated "that the West Virginia Commission has in course of preparation a proposition looking to a settlement to be presented to your Commission at the earliest moment," but requesting a little more time, the Attorney General of Virginia was preparing the present motion to be presented to this Honorable Court, for the purpose, presumably, of ending the negotiations, and renewing the controversy in Court, contrary to the spirit of the suggestion of this Honorable Court as the same is construed and interpreted by this respondent. The motion was served herein upon the 26th day of September, 1913.

The respondent prints herewith a true copy of the proceedings of the West Virginia Commission referred to in the foregoing paragraphs eight and nine as a part hereof, and marks the same "Exhibit B."

10. This respondent, further answering the motion, says that, at the time the letter aforesaid of the 22d of September, 1913, was written by the Chairman of the West Virginia Commission to the Chairman of the Virginia Commission, requesting further time, and stating that a proposition looking to a settlement was in course of preparation by the West Virginia Commission, the sub-committee of the

West Virginia Commission was diligently and faithfully at work gathering data upon which to base its proposition of settlement to the Virginia Commission, and is still at work thereon, notwithstanding the service of the notice of the motion herein.

It further says that said letter of the 22d of September, 1913, was prepared and sent to the Chairman of the Virginia Commission in the utmost good faith, and did not seek unnecessary delay, in the judgment of the West Virginia Commission.

11. It is further respectfully submitted that the West Virginia Commission, as it now stands, was not appointed until the 10th day of June, 1913, a period of only four months ago; that it was not prior to its appointment connected in any way with the management or conduct of the litigation in this case, and was, and still is, to a certain extent, unfamiliar with the history and details of the controversy, including the litigation springing therefrom; that it should not, in a matter of this importance, proceed with undue haste; that its full membership did not even receive printed copies of the opinions of this Honorable Court delivered in this cause upon the 6th day of March, 1911, and the 30th day of October, 1911, respectively, until about the 1st day of August, 1913, at which time this respondent printed, for the benefit and information of its Commission, a volume, consisting, among other things, of the opinions of this Honorable Court, and the report of the Master in this cause; that, upon the other hand, the present Virginia Commission has been in existence for many years, and has been, as this respondent is informed, identified with and in charge of the present litigation between the two States, and naturally requires less time to properly prepare for the settlement of this controversy in accordance with the suggestion of this Honorable Court than does the Commission of this respondent.

It is also true that the present Attorney General of the State of West Virginia, who, under the Constitution and laws of that State, is its chief law officer, was not inducted

into office until the 4th day of March in the present year, and during the early months of the present State administration was largely occupied on behalf of the State with the strike and flood difficulties set forth in the fourth paragraph hereof, thereby abbreviating the time that he might otherwise have devoted to assisting and advising the Commission herein. He was never before his recent election to his present office connected in any way with the Virginia debt question or litigation, and, like the Commission and other officers of this respondent, was under the necessity of informing himself in respect thereto. He has been, and is now, diligently at work with the Commission of this respondent and has but one object in view, and that is the consummation of the suggestion of this Honorable Court made to the parties in its opinion of March 6, 1911.

12. This respondent further says that, while its Commission and the sub-committee thereof, together with the Governor and Attorney General of the State, were diligently and conscientiously using every effort which they reasonably could use, and while they were exercising due diligence and were proceeding with all deliberate speed to carry into execution the requirements imposed upon them by the joint resolution of the Legislature of the State of West Virginia of February 21, 1913, and while they were formulating a proposition to be made to the Virginia Commission, as requested by said Commission at the Washington conference hereinbefore referred to, to the end that the matters in controversy between the two States might be settled in accordance with the suggestion of this Honorable Court, made in its opinion rendered March 6, 1911, as interpreted by its opinion rendered October 30, 1911, the Commonwealth of Virginia served notice of the present motion.

13. Your respondent further says that unless the said controversy is amicably adjusted and settled through the agency of its Commission, by negotiations with the Virginia Debt Commission, it will be powerless to do anything towards such adjustment and settlement, as its Legislature is not now in session and there is no officer, agent or repre-

sentative of West Virginia empowered to adjust and settle said controversy or to conduct negotiations to that end, except said Commission provided for and appointed under and by virtue of said joint resolution; and it further represents that since the appointment of its said Commission, it has been relying upon it so to conduct negotiations with the Commonwealth of Virginia as to consummate such an adjustment and settlement of said controversy as to commend the result of its negotiations to the favorable consideration of the Governor and the legislative branch of its government, and thus terminate said controversy to the satisfaction of her people and the Commonwealth of Virginia, and upon the principles of honor and justice to both States, and in fairness to the holders of the debt for whose benefit this controversy is still pending.

14. In view, therefore, of the foregoing considerations, it is respectfully submitted that the motion of the complainant is premature, and ought not to prevail; that no further action should be taken by this Court until the West Virginia Commission has had a reasonable opportunity to present its intended proposition of settlement to the Virginia Commission.

All of which is respectfully submitted.

STATE OF WEST VIRGINIA,

By A. A. LILLY,

Attorney General.

DEFENDANT'S EXHIBIT "A"

Proceedings of a Joint Conference

BETWEEN THE

VIRGINIA DEBT COMMISSIONS

OF THE

STATES OF VIRGINIA AND WEST VIRGINIA

HELD AT

THE NEW WILLARD HOTEL

WASHINGTON, D. C.,

July 25th and 26th, 1913

Proceedings of a Joint Conference of the Virginia and West Virginia Debt Commissions.

The Virginia and West Virginia Debt Commissions met in joint conference in the "Gridiron Room" of the New Willard Hotel at 11 o'clock a. m., July 25th, 1913, pursuant to call of their respective Chairmen and there were present:

On the part of Virginia:—Messrs. Moon, (Chairman) Harrison, Rhea, Wickham, Flood, Brown, Downing, and Joseph Button, Secretary.

On the part of West Virginia:—Messrs. Mason, (Chairman) Wells, Zilliken, Lenhart, Ice, Young, Chilton, Boreman, Hamilton, Ord, Miller, and John T. Harris, Secretary.

The Chairmen of the two Commissions presided jointly over the conference meeting.

CHAIRMAN MOON: On behalf of the Virginia Commission we have prepared some preliminary resolutions to see if we can get at an adjustment of this matter and try to reach an agreement. The first resolution we passed is this:

"Resolved, That it is the sense of this Commission that in the Conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the Court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

CHAIRMAN MOON: The second resolution adopted by our Commission is as follows:

"This Commission desiring to carry out in good faith the suggestions made by the Supreme Court as to securing an amicable adjustment of the amount of interest which should be paid by West Virginia upon the principal of the debt as ascertained and decided by the court, and realizing that it is not the desire of Virginia nor was it the intention of the Supreme Court that Virginia should ask or demand the full or legal amount of interest upon the principal debt as ascertained in the decision of the Court, but that there should be concessions made upon both sides, such as comport with justice and the honor and dignity of the two States; and

WHEREAS, The joint conference to be held today between the Commissions of Virginia and West Virginia was invited by the authorities of West Virginia, presumably for the purpose of carrying out in good faith the decision and suggestion of the Supreme Court of the United States.

Therefore, be it resolved, That this resolution, together with all

other resolutions adopted by this Commission at its present session, which may be pertinent, be presented by the Chairman of this Commission, to the Commission of West Virginia at the joint conference to be held today, and that the Commission of West Virginia be respectfully requested to communicate to this Commission, what, in their judgment, would be a fair and just settlement of the interest to be paid by West Virginia upon the principal amount as ascertained in the opinion and decision of the Supreme Court of the United States."

CHAIRMAN MOON: These two resolutions we lay before you, gentlemen, and ask your consideration of them. I will state that our Commission has designated Hon. Randolph Harrison, one of our members, to be spokesman for us and to give such advice as may be desirable to present to you. He has a great deal of information on the subject, and has had a great deal of experience in connection with the case, and is well qualified to submit it.

CHAIRMAN MASON: Under these resolutions you have presented, gentlemen, the only question for the West Virginia Commission to consider would be the question of interest. From our standpoint, and our reading of the opinion of the Supreme Court, other things are to be considered besides that question of interest.

This Commission has only been in existence about sixty days—or not quite that long; it was appointed on the 10th day of June—and we haven't had time on our part to go over this matter as fully as you gentlemen have who have been familiar with the case for many, many years. We have a general idea of the subject matter but have not studied it as we should study it and as we are endeavoring to study it.

We meet you with a great deal of pleasure, gentlemen, and with the sincere idea and desire that this long unsettled, vexed question between the two states may be settled. We think it ought to be settled in some way; but we have had the idea, and have it now, that the opinion of the Supreme Court leaves open more than the question of interest, or whether we should pay any interest whatever.

In the first place, it is not a final judgment; and in the second place the court indicates very clearly in its opinion that there may be adjustments to be made by the different parties; so that if you limit the discussion and the investigation simply to the question of interest, gentlemen, we will probably have some trouble right at the start,

if more than that is not to be discussed and considered in attempting to make a settlement of this matter.

CHAIRMAN MOON: Mr. Chairman, do you think you will be ready to make any reply to these resolutions any time to-day, or would you want more time to consider them?

CHAIRMAN MASON: I think I can say for our Commission now, that we would want to consider, in this attempted settlement, more than the question of interest, or whether there is to be any interest, and, if so, the amount of it.

At their own request certain persons representing the certificate holders and bondholders were here admitted and were present at the meeting.

MR. FLOOD: As Mr. Harrison has been selected by our Commission as its spokesman, I think it would be well to hear from him.

Mr. Harrison then addressed the joint conference at considerable length upon the text of the resolutions adopted by the Virginia Commission as heretofore read by Chairman Moon and submitted to the West Virginia Commission.

After which the joint conference took a recess to reconvene at the call of the respective Chairmen, and the West Virginia Commission took time to consider the resolutions submitted by the Virginia Commission and recessed until 2 o'clock p. m.

AFTERNOON SESSION—WEST VIRGINIA COMMISSION.

The West Virginia Commission re-assembled in the "Cabinet Room" of the New Hotel Willard at 2 o'clock p. m., and after a full and free discussion of the resolutions submitted this morning by the Virginia Commission adopted the following:

REPLY OF THE WEST VIRGINIA COMMISSION TO THE VIRGINIA COMMISSION'S RESOLUTION NO. 1.

"The Debt Commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the Debt Commission on the part of the State of Virginia:

'*Resolved*, That it is the sense of this Commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the

court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt.'

In reply thereto says: that in its judgment the interst, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the Joint Commission, now in session, should consider."

REPLY OF THE WEST VIRGINIA COMMISSION TO THE VIRGINIA COMMISSION'S RESOLUTION NO. 2.

"WHEREAS, The view of the Virginia Debt Commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore be it

Resolved, That the Virginia and West Virginia Commissions shall each appoint a sub-committee of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the Chairmen of the two Committees; but nothing herein contained shall prejudice the rights of either party."

Mr. Young offered the following, which was adopted:

Resolved, That the Chairman of this Commission be directed to communicate these two resolutions to the Chairman of the Virginia Commission with the request that the Virginia Commission indicate, at as early an hour as possible, their acceptance or rejection of the second resolution we have adopted.

Subsequently, the Chairman reported to the Commission that he had performed the duty assigned him.

At the hour of 5:30 p. m. Mr. Moon, Chairman of the Virginia Commission, appeared and made the following statement:

"I am directed by the Virginia Commission to acknowledge the receipt of your communication, through the Chairman, and to say that we are now engaged in formulating a reply to it. We make the suggestion that we assemble in joint session at a quarter to 8 o'clock, if agreeable to your Commission."

Whereupon,

On motion of Mr. Chilton the Commission then took a recess until 7:45 o'clock p. m. to again go into joint session with the Virginia Commission.

Joint Conference—Evening Session.

The two Commissions re-convened in joint session in the "Cabinet Room" of the New Willard Hotel at 7:45 o'clock p. m., all the members being present and the Chairmen of the two Commissions jointly presiding.

CHAIRMAN MOON: Gentlemen of the West Virginia Commission: Our Commission has made the following reply to your resolutions, in writing, received by us this afternoon:

"The Virginia Commission, having received the following communications from the West Virginia Commission, numbered for convenience 1 and 2:

> '(1) The Debt Commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the Debt Commission on the part of the State of Virginia:
>
> "*Resolved,* That it is the sense of this Commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

In reply thereto says: That in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the Joint Commission, now in session, should consider.

(2) WHEREAS, The view of the Virginia Debt Commission on the part of West Virginia is that the present conference is for preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore be it

Resolved, That the Virginia and West Virginia Commissions shall each appoint a sub-committee, of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective Commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the Chairmen of the two Committees; but nothing herein contained shall prejudice the rights of either party.'

Respectfully replies that in its judgment the language of the Supreme Court does not admit of the foregoing construction to the effect that 'the interest, if any, is not the only question,' which the joint conference should consider.

The Court said: 'Among other things there still remains the question of interest.' The Virginia Commission understands this language to mean that there were 'other things' to be considered by the Court before it reached a final decree, and that among these other things the only one referred to the two States for adjustment was the question of interest.

The Virginia Commission, being of opinion that there is no ambiguity in the opinion of the Court, and that no conference as to any other matter than the question of interest is called for between the two Commissions, respectfully adheres to the interpretation of the opinion and decision of the Court as expressed in its prior communication of this date, and as elaborated in the remarks of Mr. Randolph Harrison, before the joint session of the two Commissions.

It regrets, however, that the West Virginia Commission has not indicated, as they were requested to do, what questions other than the question of interest should be, in their judgment, considered by the two States.

The Virginia Commission further regrets that the West Virginia Commission has not seen fit to indicate or suggest an amount, the payment of which they would recommend as a final compromise and adjustment of the proportion of the debt to be borne by West Vir-

ginia, as the Virginia Commission specifically declared, through Mr. Harrison, that such proposal would receive most careful and respectful consideration if the West Virginia Commission saw fit to take up that subject.

Now, responding to the proposal of the West Virginia Commission that a sub-committee of three should be formed from each Commission, with instructions to consider all matters involved, and so forth, the Virginia Commission respectfully says that it is agreeable to the appointment of such sub-committees provided the matters to be considered by them are as indicated above, namely:

(1) The amount of interest which West Virginia should pay upon the sum ascertained by the Court in its decision to be West Virginia's share of the principal of the debt.

(2) Any proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia.

Provided, further, that said sub-committees be directed to meet on the ———— day of ————————, 1913, and report to an adjourned meeting of this joint conference to be held on the ———— day of ————————, 1913."

CHAIRMAN MASON: I take it, gentlemen, that that is only a qualified acceptance of the proposition made and that we would want to discuss it further as to whether or not we will want to eliminate from the report to be made by the sub-committee all questions except the payment of interest; and, further, that the proposition to pay a part shall come from West Virginia. That, I say, we will want to consider.

I hope, gentlemen, you will feel free to simply leave the question open so that the sub-committee when it meets may discuss it, and make such report as it shall deem proper, without your insisting upon your notion about it; but whether we want to appoint a sub-committee under those restrictions as you have them there, I will say that we shall have to have time to think about it. I regret very much that you limit it in that way.

CHAIRMAN MOON: We would suggest a separate session of the Commissions to give you an opportunity to consider that question.

CHAIRMAN MASON: Yes; it will take a few moments.

CHAIRMAN MOON: We will give you an opportunity to go into

executive session to determine upon that point. Our Commission is up in Room 601, if you should want us.

Whereupon,

The Virginia Commission then retired, and after some time spent in discussion the West Virginia Commission formulated the following in response to the last foregoing communication:

"The West Virginia Commission has received the following statement from the Virginia Debt Commission:

'The Virginia Commission, having received the following communications from the West Virginia Commission, numbered for convenience 1 and 2:

"(1) The Debt Commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the Debt Commission on the part of the State of Virginia:

'*Resolved*, That it is the sense of this Commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

In reply thereto says: That in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the Joint Commission, now in session, should consider.

(2) WHEREAS, The view of the Virginia Debt Commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore be it

Resolved, That the Virginia and West Virginia Commissions shall each appoint a sub-committee of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters in-

volved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the Chairmen of the two Committees; but nothing herein contained shall prejudice the rights of either party."

Respectfully replies that in its judgment the language of the Supreme Court does not admit of the foregoing construction to the effect that "the interest, if any, is not the only question," which the joint conference should consider.

The Court said: "Among other things there still remains the question of interest." The Virginia Commission understands this language to mean that there were "other things" to be considered by the Court before it reached a final decree, and that among these other things the only one referred to the two States for adjustment was the question of interest.

The Virginia Commission, being of opinion that there is no ambiguity in the opinion of the Court, and that no conference as to any other matter than the question of interest is called for between the two Commissions, respectfully adheres to the interpretation of the opinion and decision of the Court as expressed in its prior communication of this date, and as elaborated in the remarks of Mr. Randolph Harrison, before the joint session of the two Commissions.

It regrets, however, that the West Virginia Commission has not indicated, as they were requested to do, what questions other than the question of interest should be, in their judgment, considered by the two States.

The Virginia Commission further regrets that the West Virginia Commission has not seen fit to indicate or suggest an amount, the payment of which they would recommend as a final compromise and adjustment of the proportion of the debt to be borne by West Virginia, as the Virginia Commission specifically declared, through Mr. Harrison, that such proposal would receive most careful and respectful consideration, if the West Virginia Commission saw fit to take up that subject.

Now, responding to the proposal of the West Virginia Commission that a sub-committee of three should be formed from each Commission, with instructions to consider all matters involved, and so forth, the Virginia Commission respectfully says that it is agreeable to the appointment of such sub-committee, provided the matters to be considered by them are as indicated above, namely:

(1) The amount of interest which West Virginia should pay upon the sum ascertained by the Court in its decision to be West Virginia's share of the principal of the debt.

(2) Any proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia.

Provided, further, that said sub-committees be directed to meet on the ——— day of ———, 1913, and report to an adjourned meeting of this joint conference to be held on the ——— day of ———, 1913.'

And in reply to the last communication of the Virginia Debt Commission the West Virginia Debt Commission says that it is anxious to proceed with the negotiations but cannot consent to agree in advance that only the question of interest shall be considered, or that the West Virginia sub-committee shall be required to first submit a proposition looking to a settlement. This Commission is willing and anxious to approach a settlement upon equal terms, leaving, in the first instance, all questions of procedure to the said sub-committees.

This Committee did not understand the remarks made by Mr. Harrison today as a proposition. We considered only the written resolutions presented to us.

In reply to the remarks made by Mr. Harrison at the joint meeting today, and referred to in your communication, we would say that this Commission does not feel sufficiently acquainted with the questions involved—for reasons heretofore stated—to submit a proposition at this time, and asks that the whole subject matter be submitted to the sub-committees hereinbefore referred to, with the understanding that the said sub-committees be required to report their action for approval to their respective Commissions at a time in the near future to be now agreed upon."

On motion of Mr. Chilton the foregoing reply was made and the Chairman was directed to communicate it to the Virginia Debt Commission.

Subsequently, the Chairman reported that he had performed the mission assigned him.

Within a reasonable time after the delivery of the communication to the Virginia Commission the following reply was received through its Chairman, Mr. Moon:

"The Virginia Commission has given careful consideration to the last communication from the West Virginia Commission, stating, in effect, that the conference between the two Commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia Commission for reasons heretofore repeatedly stated, feels constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed."

On receipt of this reply the West Virginia Commission took the following action:

"Washington, D. C., July 25, 1913.

"The following communication was received from the Virginia Commission after 11 o'clock p. m.:

'The Virginia Commission has given careful consideration to the last communication from the West Virginia Commission, stating, in effect, that the conference between the two Commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia Commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed.'

Pending a consideration of the communication Mr. Miller moved that owing to the lateness of the hour at which the communication was received, the further consideration of the same be postponed until tomorrow morning, July 26th, 1913, at 10 o'clock, and that the West Virginia Commission adjourn until that hour.

Which motion was put by the Chair and carried by unanimous vote of the Commission at 12 o'clock midnight, and the Chairman of the Virginia Commission was notified of the adjournment by the Chairman of the West Virginia Commission.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Washington, D. C., July 26, 1913.

The West Virginia Commission met at 10 o'clock a. m., in the

"Cabinet Room" of the New Willard Hotel, pursuant to adjournment, and the Chairman and all the members of the Commission were present.

The following reply was made, through the Chairman, to the last communication received from the Virginia Commission last night:

"Washington, D. C., July 26, 1913.

"The Virginia Debt Commission on the part of the State of West Virginia received at 11:15 last night the following communication from the Virginia Commission:

'The Virginia Commission has given careful consideration to the last communication from the West Virginia Commission, stating, in effect, that the conference between the two Commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia Commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed.'

In reply to the foregoing communication the West Virginia Commission regrets that the Virginia Commission has declined to submit the matters in question to a sub-committee, as heretofore proposed by the West Virginia Commission, and the West Virginia Commission now suggests that the two Commissions have a joint meeting on the ——— day of ——— at ——— for the purpose of further considering a settlement of West Virginia's proportion, if any, of the Virginia debt, proper to be borne by the State of West Virginia, and to arrive if possible at some adjustment thereof."

———

To which communication the following reply was received from the Virginia Commission, through Chairman Moon:

"The Virginia Commission have considered the suggestion of the West Virginia Commission for an adjournment of the conference between the two Commissions.

If it is the purpose of the West Virginia Commission to insist that the joint conference shall embrace a consideration *de novo* of the entire case, both as to principal and interest involved, then the Virginia Commission can perceive no advantage to result from further negotiations. The Virginia Commission cannot recede from their

views as heretofore announced to the West Virginia Commission in respect to the matters to be embraced in the conference between the two Commissions.

With this understanding it consents to the adjournment of the conference to Tuesday, August 12, 1913, at 10 o'clock a. m., at the New Willard Hotel, Washington."

The West Virginia Commission made the following reply to the above communication:

"Washington, D. C., July 26, 1913.

"The West Virginia Commission acknowledge receipt of the communication from the Virginia Commission concurring in the suggested adjournment upon certain terms and conditions, which terms and conditions the West Virginia Commission declines to be bound by. We, however, agree to the time and place of adjournment suggested by you and insist that this adjournment shall be and is without terms or conditions and without prejudice to the rights of either party."

The Chairman was directed to deliver the foregoing communication to the Chairman of the Virginia Commission, and subsequently reported to this Commission that he had performed the duty assigned to him by delivering the same to the Hon. John B. Moon, Chairman of the Virginia Commission, the Virginia Commission not being in session, they having separated before that time, as Chairman Mason was informed.

No reply being received, after waiting a reasonable time, on motion the Commission adjourned to meet at the New Willard Hotel, in the city of Washington, on the 12th day of August, 1913, at 10 o'clock a. m.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

DEFENDANT'S EXHIBIT "B"

Record of the Proceedings

OF THE

VIRGINIA DEBT COMMISSION

ON THE PART OF

WEST VIRGINIA, AND OF ITS

SUB-COMMITTEE

RECORD OF PROCEEDINGS

On the 21st day of February, 1913, the Legislature of West Virginia adopted the following, as Conference Committee's Substitute for House Substitute for Senate Joint Resolution No. 5:

"Creating a commission known as the Virginia Debt Commission, to provide for arranging and settling with the commonwealth of Virginia the proper proportion of the public debt of the original commonwealth of Virginia, if any should be borne by West Virginia, to take into consideration all matters arising between the commonwealth of Virginia and the State of West Virginia in reference to said original public debt, and to report its proceedings to the Governor of the State.

"WHEREAS, The commonwealth of Virginia instituted a suit in the Supreme Court of the United States against the State of West Virginia, to have the State of West Virginia's proportion of the public debt of Virginia as it stood before one thousand eight hundred and sixty-one, ascertained and satisfied; and

"WHEREAS, At the October term, one thousand nine hundred and ten, the Supreme Court of the United States made a finding that the share of the principal debt of the original commonwealth of Virginia to be borne by the State of West Virginia, as seven million one hundred and eighty-two thousand, six hundred and seven dollars and forty-six cents; and

"WHEREAS, Said court did not fully and finally decide the question involved, but suggested that such proceedings and negotiations should be had between the states upon all the questions involved in said litigation, as might lead to a settlement of the same; therefore, be it

"Resolved by the Senate of West Virginia, the House of Delegates concurring therein:

"That a commission of eleven members, known as the Virginia Debt Commission, is hereby created. The members of said commission shall be appointed by the Governor, two of whom shall be chosen from each congressional district of the State, and one at large, not more than six of whom shall belong to any one political party, and all resignations or vacancies in the said commission as they occur shall be filled by the appointment of the Governor.

"Said Commission is authorized and directed to negotiate with the commonwealth of Virginia, or with any person or committee owning or holding any part of the said indebtedness for a settlement of West Virginia's proportion of the debt of the original commonwealth of Virginia proper to be borne by the State of West Virginia.

"The Commission is hereby directed to ascertain and report upon and give the utmost publicity to all the facts in relation to the pending suit instituted against the State of West Virginia, which is owned or held or claimed to be due, at law or in equity, by the commonwealth of Virginia in her own right; and having made the investigation required hereby, said commission is authorized and directed to negotiate with the commonwealth of Virginia for a settlement of West Virginia's proportion of the debt of the original commonwealth of Virginia proper to be borne by the State of West Virginia.

"A majority of said Commission shall have authority to act. The Commission shall choose its chairman and appoint its secretary and other necessary officers.

"The expenses properly incurred by the Commission and its individual members, including compensation of said members at the rate of ten dollars per day for the time actually employed, shall be paid by the State out of the moneys appropriated for said purpose.

"The Commission shall make a report to the Governor as soon as practicable, and upon receipt of said report the Governor shall convene the Legislature for the consideration of the same.

"The Commission is hereby authorized to sit within or without the State and to send for papers and records and to examine witnesses under oath."

In pursuance of the authority vested in him by the foregoing resolution His Excellency, H. D. Hatfield, Governor, made the following appointments of members of the Virginia Debt Commission:

First Congressional District—John W. Mason, of Fairmont; Henry Zilliken, Wellsburg.

Second Congressional District—J. A. Lenhart, Kingwood; W. T. Ice, Philippi.

Third Congressional District—U. G. Young, Buckhannon; Joseph E. Chilton, Charleston.

Fourth Congressional District—R. J. A. Boreman, Parkersburg; John M. Hamilton, Grantsville.

Fifth Congressional District—W. D. Ord, Landgraff; Joseph S. Miller, Kenova.

At Large—W. E. Wells, Newell.

In obedience to a call of the Governor the Commission met in the capitol at the city of Charleston on Tuesday, the 10th day of June, 1913, and there were present: Mr. W. E. Wells, member-at-large; and Messrs. Mason, Zilliken, Lenhart, Ice, Young, Chilton, Boreman, Hamilton, and Miller, representing their respective districts as above noted.

Absent: Mr. W. D. Ord.

On motion of Mr. Hamilton, Hon. John W. Mason was elected Chairman of the Commission, by acclamation.

On motion of Mr. Boreman, Mr. John T. Harris was appointed Secretary.

The oath of office was administered to all the members present, and to the Secretary, by John C. Bond, a Notary Public within and for the county of Kanawha.

His Excellency, Governor Hatfield, and Attorney General Lilly, upon invitation addressed the Commission briefly as to matters it would be called upon to consider, and each gave assurances that he was ready to render all the assistance he could to further the work of the Commission. The Governor also stated that he would communicate with the Governor of Virginia and notify him of the meeting and organization of this Commission.

On motion of Mr. Young the Secretary was directed to extend an invitation to Ex-Governor W. M. O. Dawson and to Mr. George McClintic, of counsel on behalf of the defendant in the case of Virginia vs. West Virginia, pending in the Supreme Court of the United States, to meet the Commission in executive session at 2 o'clock this afternoon and give such information as they may have in relation to the status of the Virginia debt case, and answer any questions that the Commission may desire to propound.

Upon the further motion of the same gentleman a recess was then taken until 2 o'clock p. m.

AFTERNOON SESSION.

The Commission reconvened at 2 o'clock p. m., all the members being present but Mr. Ord.

In response to the invitation extended under the resolution proposed by Mr. Young this morning, Ex-Governor Dawson spoke briefly of his connection with the case of Virginia vs. West Virginia, and suggested that if the members of the Commission would read the briefs of counsel on final hearing, they would no doubt be better able to familiarize themselves with the case than in any other way.

Mr. McClintic spoke at length, giving a history of the case in its various stages from his earliest connection with it down to the time of the final hearing. He also quoted extensively from the record and answered many questions propounded to him by members of the Commission.

Mr. Young offered the following:

Resolved, That a sub-committee of three be appointed to ascertain and report at the next meeting of the Commission:

First—The status of the accounts between Virginia and West Virginia based upon the several theories of settlement which have been suggested as the proper basis of adjustment.

Second—The status of the accounts as shown by the Debt Commission of 1871.

Third—The status of the account as shown by the Senate Finance Committee of West Virginia of 1873.

Fourth—Which account, in their opinion, is the nearest correct and equitable, and their reasons therefor, and if none meets their views, to make up and report one of their own, with their reasons in support thereof.

Fifth—An outline of further procedure on the part of the Commission.

Sixth—Such other matters as they deem pertinent and proper.

The question being upon the adoption of the resolution, the same was propounded by the Chair and did not prevail, the vote being Ayes 4, Noes 5.

On motion it was

Ordered, That the Secretary be authorized and directed to have printed all necessary stationery for the use of the Commission and to provide a book in which the minutes of the meetings of the Commission shall be kept; also a book of blank warrants for the per diem and expenses of the members and any employes. It was further

Ordered, That all warrants shall be signed by the Chairman and Secretary.

On motion of Mr. Wells, the Commission then adjourned to meet at Charleston on Tuesday, July 22, 1913, at 10 o'clock a. m.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Charleston, West Va., July 22, 1913.

The Commission met pursuant to the adjournment of June 10th, and there were present

Messrs. Mason, (Chairman) Wells, Zilliken, Lenhart, Young, Chilton, Boreman, Hamilton, Ord and Miller.

Absent: Mr. Ice.

The oath of office was administered to Mr. Ord, (who was not present at the organization meeting) by John C. Bond, Notary Public.

The minutes of the last meeting were read and approved.

On motion of Mr. Zilliken the following was adopted:

Resolved, That a sub-committee of three be appointed by the Chair, whose duty it shall be to discover, if possible, the ownership of the Virginia Debt Certificates, and report the same to this Commission at a subsequent meeting.

Whereupon, the Chair appointed as members of the sub-committee Messrs. Zilliken, Wells and Young.

On motion the Commission then took a recess until 2 o'clock this p. m.

AFTERNOON SESSION.

The Commission re-convened at 2 o'clock, all the members being present but Mr. Ice.

The Chair submitted to the Commission a proposition to meet the Virginia Debt Commission, in conference, at the New Willard Hotel, in the city of Washington, on Friday, the 25th instant.

Pending a discussion of which Mr. Ord offered the following:

Resolved, That we ask the Virginia Commission to give us more

time in which to acquaint ourselves with the facts of the case of the State of Virginia against West Virginia.

The question being upon the adoption of the resolution the same was propounded by the Chair and the resolution was lost.

Messrs. Ord and Boreman requested that the record show that they voted in favor of the resolution.

Those who voted against it explained their votes by saying that as the time of the Washington conference had already been fixed by the Chairmen of the two Commissions, they did not deem it either wise or expedient to attempt a cancellation of the engagement, and that if the meeting resulted in nothing else, it would give the members of this Commission an opportunity to meet the members of the Virginia Commission and to become personally acquainted with them.

The question recurring upon the proposition to meet the Virginia Debt Commission, in conference, in the city of Washington on the 25th, after a further discussion of the matter it was decided that this Commission would attend the meeting and would leave the city of Charleston at 6:45 p. m. of the 23rd.

The question of counsel for the Commission coming up for consideration, Governor Hatfield being present explained that the Board of Public Works had made arrangements with Mr. Charles Edgar Hogg—in view of his previous connection with the debt case as counsel on behalf of the State, and of the fees that he had received—to contribute his legal services to this Commission without expense to it; which tender was accepted by the Commission.

On motion of Mr. Miller, Mr. George McClintic, one of counsel previously employed by the State in the case, was extended an invitation to accompany the Commission on its trip to Washington, on the basis of his actual expenses, to be paid out of the funds of the Commission, but no additional compensation to be paid him.

Subsequently, Mr. McClintic appeared before the Commission and after the resolution had been explained to him, stated that while he had been employed in the case, and had received compensation from the State, he felt that he had rendered services to cover the full amount of all money paid him, but that under the circumstances he would be willing to accompany the Commission on its trip to Washington on the basis of his actual expenses as proposed, but that he did not wish his action to be considered a precedent if any further services were required of him.

On motion, the Commission then adjourned until to-morrow morning at 10 o'clock.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Charleston, West. Va., July 23, 1913.

The Commission met pursuant to adjournment of yesterday.

Present: Messrs. Mason, (Chairman) Wells, Zilliken, Lenhart, Young, Chilton, Boreman, Hamilton, Ord and Miller.

Absent: Mr. Ice.

The minutes of the meeting of yesterday were read and approved.

(A paragraph here omitted refers to an account rendered by the Secretary for services and expenses, and the allowance of the same by the Commission.)

Mr. Hogg appeared before the Commission and in an informal way gave his views of certain matters involved in the debt suit, and stated that he would prepare and submit to the Commission at a later date a paper that might be of benefit to it in its future deliberations.

On motion the Commission then adjourned to meet in Washington to-morrow, July 24th, upon the call of the Chairman.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Washington, D. C., July 24, 1913.

The Commission left Charleston at 6:45 last evening and arrived at Washington at 7:30 this morning. Headquarters were established at the New Willard Hotel.

Upon the call of the Chairman a meeting was held in the "Gridiron Room" at 11 o'clock a. m., at which all the members were present with the exception of Mr. Ice.

United States Senator William E. Chilton appeared before the Commission in response to an invitation of the Chairman, and spoke briefly of the work it had in hand.

At the noon hour a recess was taken until 3 o'clock p. m., to meet in

the Census Committee Room of the United States Senate, at the capitol, upon the invitation of Senator Chilton, Chairman of that Committee.

AFTERNOON SESSION.

The Commission met, pursuant to the recess motion, at 3 o'clock, all the members being present but Mr. Ice.

Hon. William E. Chilton, United States Senator, Congressmen John W. Davis of the First Congressional District of West Virginia, William G. Brown of the Second Congressional District, and Hunter H. Moss of the Fourth Congressional District met with the Commission. Word was received from Senator Goff that he regretted his inability to attend, but that he would meet the Commission at 10 o'clock to-morrow morning at the New Willard Hotel. After an extended informal discussion of various questions involved in the debt case, an adjournment was had until 10 o'clock to-morrow morning at the New Willard Hotel.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Washington, D. C., July 25, 1913.

The Commission met pursuant to the adjournment of yesterday, all the members being present. Complying with an invitation heretofore extended him, United States Senator Nathan Goff met with the Commission, discussing the status of the case of Virginia vs. West Virginia and giving his views upon many questions involved in and arising out of the same. At the hour of 10:55 a. m., the Chairman announced that at 11 o'clock the Commissions from the two states would meet in conference.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Charleston, West Va., August 11, 1913.

Pursuant to a call of the Chairman the Commission met in the Governor's Reception Room, at the capitol, in the city of Charleston, on this day, at 10 o'clock a. m.

Present: Messrs. Mason, (Chairman,) Boreman, Zilliken, Hamilton, Young, Lenhart, Ord, Ice, Chilton, Wells and Miller, being all the members of the Commission. Also, Attorney General Lilly, Associate Counsel Hogg and the Secretary.

The minutes of the Washington meetings were read and approved.

CHAIRMAN MASON: After our meeting at Washington I learned through letters received from various members of the Commission, and otherwise, that this Commission would not be ready to meet with the Virginia Commission, at Washington, on the 12th day of August, pursuant to the adjournment of July 26th; and not desiring to put the members of the Virginia Commission to the inconvenience of going to Washington unless they desired to go, I sent the following telegram to the Hon. John B. Moon, Chairman of the Virginia Commission:

"Fairmont, West Va., Aug. 9, 1913.

"Hon. John B. Moon,
Charlottesville, Va.

Certain our Debt Commission will not be ready for meeting Tuesday. Members have not had time enough for investigation. We meet Charleston Monday and will have to ask that time be extended to a day in near future. Under these circumstances I suggest Washington meeting be now re-called. (Signed)

JOHN W. MASON."

On the same day that telegram was sent, I also wrote and mailed to Mr. Moon a letter of which this is a copy:

"August 9, 1913.

Hon. John B. Moon,
Charlottesville, Va.

Dear Sir:

Since returning from Washington the members of the West Virginia Debt Commission have been diligently investigating the problem submitted to them by the Legislature. They find that there are many things to be considered before we can have an intelligent settlement. You must bear in mind this Commission is composed of men who knew comparatively little of the subject and none of the members had ever studied the question in detail. Hence, we find that it will be utterly impossible to resume negotiations on the 12th of August as

intended when we separated at Washington. Therefore, I today sent you the following day letter telegram:

'Certain our Debt Commission will not be ready for meeting Tuesday. Members have not had time enough for investigation. We meet Charleston Monday and will have to ask that time be extended to a day in near future. Under these circumstances I suggest Washington meeting be now recalled.'

You will readily understand, I think, the magnitude of work before this Commission. In the first place you are no doubt aware that the people of West Virginia never considered that they owe anything, or, if anything, a very small amount. As indicating the sentiment of West Virginia I here quote a resolution adopted by the Constitutional Convention in 1872, offered by its Ex-Judge Samuel Woods, of Barbour County, as follows:

'*Resolved*, That there exists no just, legal or equitable claim against the State of West Virginia for the payment of any portion of the public debt of Virginia and that the existing provision on that subject in our present constitution ought no longer to exist.'

Judge Woods was a very prominent man at the time and had been a member of the Virginia Convention of 1861, and sympathized with the South and remained at or near Richmond during the entire war. He cannot be accused of having any prejudice against the old State. He was a man of large means, took great interest in public matters and served a long time as one of the judges of our Supreme Court.

In pursuance of this resolution that Convention did eliminate from the Constitution of 1863 Section 8, Article 8, which was the article authorizing the payment of our part of the Virginia debt, and the present Constitution, adopted in 1872, less than ten years after the organization of the State, not only ignores the payment of this debt, but by references to this history inferentially declares against it. I refer to these things to indicate the trouble there will be in convincing the people of West Virginia that they owe anything on account of this debt. This Committee having been appointed by the Legislature to inquire into and negotiate upon this subject, are exceedingly anxious to do so as intelligently as possible and without any references to preconceived notions except so far as the opinions formed at the time of the formation of the State, by men familiar with all the facts, may be regarded as correct. You, together with the members of your Commission, have gone over these questions fully and have had years of experience in acquiring the facts. We have had less than 60 days. We take it that before a satisfactory conclusion can be reached that we shall have to verify many statements, accounts and facts upon which the correct conclusion rests. This being a public matter and our duties being only advisory, we would not feel that we have done our duty to the public, should we make a proposition, accept or reject one, without

giving a reason therefor at least satisfactory to ourselves. I beg to assure you that we will pursue our investigations as rapidly as possible and as soon as we feel that we are prepared to talk the matter over with you intelligently, we will ask you to call your Commission together for that purpose. I hope this will be in the near future.

Very respectfully yours,

JOHN W. MASON.

(Signed)

JWM/S

To which telegram and letter no replies were received. Thereupon, The Commission directed Chairman Mason to call Mr. Moon by long distance telephone and inquire whether or not he had received the telegram, and what was the pleasure of the Virginia Commission.

Mr. Moon was called and replied to Chairman Mason that immediately upon receipt of the telegram of August 9th he had notified the members of the Virginia Commission that there would be no meeting at Washington on the 12th of August, and Chairman Mason suggested to Chairman Moon that a time be fixed for another meeting in the near future, and that the time be arranged by the Chairmen of the two Commissions, which was assented to by Mr. Moon.

On motion the Commission then took a recess until 1:30 p. m.

AFTERNOON SESSION

The Commission re-assembled at 1:30 o'clock p. m., all the members being present, together with Attorney General Lilly and Associate Counsel Hon. Charles Edgar Hogg.

Mr. Lilly read a paper prepared by Mr. Hogg and himself, supplementary to a former statement submitted by them for the use of the Commission, "On the Debt Case, together with Conclusions Deducible from the Opinion of the Court, rendered on what is Denominated a Final Hearing of the Case," also, another paper giving "Reasons why the Proportion of the Debt of Virginia to be assumed by West Virginia should be ascertained by the method prescribed by Section 9 of the Ordinance adopted in August, 1861."

Following the reading of the papers there was a discussion of the same by Messrs. Wells, Hamilton, Young, Lenhart and other members of the Commission, after which Mr. Wells offered the following resolution, which was adopted:

Resolved, That a sub-committee consisting of Messrs. Ord, Young

and Ice is hereby appointed to co-operate with the Attorney General and the associate counsel in this case, in drawing up the necessary data and statistics as a basis for propositions to be made to the Virginia Commission, and that either one, two or all of said sub-committee, at their convenience, are authorized to perform the work assigned them in connection with this matter.

On motion of Mr. Wells the Commission then adjourned to meet at the call of the Chairman.

.....
Chairman.

.....
Secretary.

Proceedings of the Sub-Committee

Charleston, West Va., August 11, 1913.

The sub-committee created by the resolution adopted by the Virginia Debt Commission at its meeting this day, met at 7 o'clock p. m., at the office of the Attorney General, in the capitol building, in the city of Charleston, to consider the duties imposed upon it by virtue of said resolution.

All the members of the sub-committee were present; also, Attorney General Lilly and Associate Counsel Hogg.

Thereupon, Mr. W. D. Ord was elected Chairman of said sub-committee.

After a general discussion of the duties of the sub-committee, on motion an adjournment was had until to-morrow morning, August 12, at 9 o'clock.

WILLIAM D. ORD.
Chairman Sub-Committee.

JOHN T. HARRIS,
Secretary.

Charleston, West Va., August 12, 1913.

The sub-committee met pursuant to adjournment of last night, all the members and the Attorney General and Associate Counsel being present. Further discussion was had as to matters and things that should be considered by this sub-committee, the members of the sub-

committee agreeing upon the respective investigations to be made, after which an adjournment was had to meet in the near future, at the call of the Chairman.

WILLIAM D. ORD,
Chairman Sub-Committee.

JOHN T. HARRIS,
Secretary.

Charleston, West Va., Sept. 18, 1913.

The sub-committee appointed under the resolution adopted August 11th, 1913, met in the city of Charleston, pursuant to call, on the 18th day of September, 1913, and there were present: Messrs. Ord, (Chairman) Young and Ice; also, Attorney General Lilly and the Secretary of the Commission.

Considerable time was spent in a discussion of the methods to be pursued in securing the necessary data and statistics upon which to base propositions to be made to the Virginia Commission.

The Chairman stated that he had been in conference with the Governor, the Board of Public Works and counsel representing West Virginia, and that it was unanimously agreed by them that in order to make an intelligent and proper offer to the Virginia Commission with reference to a settlement of West Virginia's proportion, if any, of the public debt proper to be borne, as based upon the suggestions contained in the opinion of the Supreme Court of the United States of the 6th day of March, 1911, that it would be necessary to obtain certain data, facts and information not disclosed in the present record, and that it would probably require further investigation by accountants; and it being represented to this sub-committee by the Board of Public Works that it is willing to secure such data and information upon which to predicate propositions of settlement as aforesaid, and that it will secure such data and information and furnish the same at the earliest practicable date, which will probably be within two or three months, the sub-committee expressed its desire to receive any and all information upon which an adjustment can be properly predicated.

The following preamble and resolution were offered by Mr. Young and adopted:

> WHEREAS, The sub-committee of the West Virginia Commission of the Virginia Debt Commission appointed to formulate a proposition of settlement to be submitted to the Virginia Commission, find it necessary to ascertain certain facts

and figures not in the record and not available from the record, which will take some time; therefore be it

Resolved, That the Hon. John W. Mason, Chairman of the West Virginia Commission, be requested to inform the Virginia Commission, by a letter directed to its Chairman, Mr. Moon, that we are diligently at work on a proposition to be submitted to the Virginia Commission, but that further time will be needed to complete it.

Whereupon, the Chairman of this sub-committee addressed the following communication to the Chairman of the Commission:

"Charleston, West Va., Sept. 18, 1913.

Hon. John W. Mason,
Chairman,
Fairmont, West Virginia.

Dear Sir:

I enclose copy of a resolution adopted by our sub-committee today. Also, draft of a letter to Mr. Moon, which you can sign and mail to him if it meets with your approval.

Yours truly,

(Signed) W. D. ORD,
Chairman Sub-Committee."

The draft of the letter to Mr. Moon above referred to is as follows:

"Fairmont, West Virginia, September 22, 1913.

Hon. J. B. Moon,
Chairman Virginia Debt Commission,
Charlottesville, Virginia.

My Dear Sir:

I am instructed by a sub-committee of the West Virginia Commission, appointed by the Governor of that State to negotiate a settlement, in accordance with the suggestions of the Supreme Court of the United States, of the controversy between the States of Virginia and West Virginia relative to the settlement of the Virginia debt, to say to you, and through you to the Virginia Commission, that the West Virginia Commission has in course of preparation a proposition (looking to a settlement) to be presented to your Commission at the earliest moment; but that it will yet require some three or four months time in which to put said proposition in final and intelligent form. I cordially endorse the recommendation of the sub-committee and hope it will be agreeable to your committee to consider the same favorably.

In the meantime, if your Commission should desire to sub-

mit any suggestions or propositions to this Commission, looking to the same end, we would gladly and without unnecessary delay consider the same.

With great respect, I remain,

Yours, etc.,

Chairman West Virginia Commission.

Secretary.

The sub-committee then adjourned to meet at the call of the Chairman, with the understanding that each member should diligently continue his investigations under the resolution raising this sub-committee.

Chairman Sub-Committee.

Secretary.

Teste:

JOHN T. HARRIS.
Secretary.